that this is not likely, it urges the Bureau to apply the mandatory disclosure rules adopted in the Formal Complaints Streamlining Order. Under those rules, parties would be obliged to produce only those documents upon which they intend to rely to support their claims or defenses, and to identify other documents that might be relevant. Ameritech proposes that these disclosures take place with the parties' respective initial pleadings (*i.e.*, with the complaint and with an answer that is filed twenty days after the complaint). Defendants should be permitted to request production of particular documents identified by complainant within 10 days after the complaint is filed. Complainants should be permitted to request production of documents identified by defendant within 5 days after service of the answer. Formal oppositions to these motions would not be filed; however, both parties would be given the opportunity to support or oppose discovery requests at the initial status conference.

In order to narrow the burdens imposed by these mandatory disclosure obligations and lend clarity to them, the Task Force should narrow the scope of these requirements, upon request and as appropriate, during pre-filing discussions. This is discussed in the section that follows.

In addition to information obtained through mandatory disclosure, as discussed above, parties to expedited Task Force adjudications should have the same right to request a limited number of interrogatory responses as do parties to other formal complaint proceedings. To this end, the rules adopted in the Formal Complaints Streamlining Order should apply. Moreover, parties should

be permitted, until five days prior to the initial status conference, to request additional discovery, including additional interrogatories or depositions. Those requests should be decided at the status conference.

Given the tremendous burdens that are imposed under the new rules, Ameritech does not believe it possible to specify in advance sanctions for noncompliance. Ameritech believes that inadvertent violations of these rules are going to be commonplace, if only because it is not reasonable to expect parties to succeed in identifying all required documents in extremely short time frames, and because the proposed mandatory disclosure requirements require subjective analysis that produce honest differences of opinion. Accordingly, the Bureau will have to consider the appropriateness of sanctions on a case-by-case basis, taking into account all relevant circumstances, including the extent to which a violation is material and the extent to which it is excusable. Among the sanctions that could be invoked in appropriate cases would be restarting the clock or deeming a failure to comply to be an admission with respect to particular facts. Fines and forfeitures can also be considered.

4. Pre-filing Procedures

Paragraph 4 of the Notice seeks comment on what pre-filing procedures should be required before a complaint will be accepted onto the Accelerated docket. The Bureau asks, in particular, whether a complainant seeking acceptance onto that docket should, as a precondition of such acceptance, have attempted to undertake informal settlement discussions under the auspices of the Task Force. It asks whether such discussions might be prohibited under the Commission's *ex parte* rules. It asks, further, whether defendants, as well as complainants, should be able to seek Task Force adjudication of a dispute and whether "previously filed complaints" could be transferred to the Task Force. Finally, it seeks comment on how best to protect confidential or proprietary information of parties engaged in informal pre-filing discussions.

Ameritech fully supports the Bureau's suggestion that prospective complainants seeking expedited adjudication of a complaint by the Task Force be required, before filing, to participate in informal, settlement discussions under the auspices of the Task Force. Such discussions would not violate the Commission's *ex parte* rules provided that both parties were present during all communications with Task Force personnel relating to the merits of the complaint.[18] Ameritech proposes, in particular, that in order to seek expedited

[18] Under the Commission's rules, an *ex parte* presentation is defined as any communication directed to the merits or outcome of a proceeding, to or from decision-making personnel, which, if written, is not served on all parties, and if oral, is made without advance notice to the parties and without opportunity for them to be present. 47 CFR § 1.1202(a) and (b). Thus, so long as

consideration of a complaint by the Task Force, a complainant must have sent notice of its claims at least 30 days before filing its complaint, to the defendant, with a copy to the Task Force. That Notice should describe in detail and with specificity the nature of the allegations against defendant and the legal basis for all claims. Defendant would then have fourteen days to review the allegations and provide a response to the complainant and the Task Force. The response need not be an answer *per se*, but it should address with specificity complainant's claims. Thereafter, complainant and defendant should be required to meet with the Task Force to attempt to settle the matter, or, at least, narrow the range of the issues in dispute. The Task Force could attempt informally to mediate the matter during these discussions, or, at least, to prod the parties towards a settlement. If no settlement could be achieved, complainant would be free to file a complaint at the end of the 30-day period, and either complainant or defendant could request, with their initial pleading, expedited Task Force consideration of the matter.

This proposal would offer numerous benefits. First, and perhaps most importantly, informal participation by the Task Force in pre-complaint discussions could be a significant factor that drives the parties to settlement. It would discourage frivolous complaints by complainants and stonewalling by defendants, and it could help to push obstinate parties towards an otherwise elusive middle-ground.

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both parties are present at any pre-filing discussions of the merits of the prospective complaint,

Second, Task Force participation in pre-complaint discussions would provide it with the information necessary to determine whether the dispute should be adjudicated on an accelerated basis and whether a hearing would be useful in resolving disputed issues. It would give the Task Force some idea of the nature and complexity of disputed facts, as well as the need for an expedited decision. It would also enable the Task Force to identity any significant jurisdictional issues that might dictate against assigning the complaint to the Accelerated Docket.

Third, in the event the Task Force decided to place the complaint in an Accelerated Docket, the information gained during pre-filing discussions would be extremely useful to the Task Force in managing the Complaint on an accelerated basis. For example, having gained a sense of the particulars of the complaint and the parties' positions with respect to the issues, the Task Force would be far better positioned to manage effectively the discovery process to ensure that it is neither too burdensome under expedited schedules nor too narrow to permit a full and fair adjudication of the issues. Indeed, Ameritech proposes that the Task Force begin managing the discovery process even before a complaint is filed. In particular, to ease the burdens associated with the Bureau's proposed mandatory disclosure requirements, the Task Force could specify at a final pre-filing meeting what types of documents the parties would have to exchange with their pleadings. Alternatively, the Task Force could rule on

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the Commission's *ex parte* rules would not be implicated.

particular discovery-related requests – for example, requests that certain categories of documents not be subject to disclosure because of their marginal relevance or because of the burdens of producing them. By managing the discovery process up-front, the Task Force could reduce the potential for subsequent disputes and ease undue burdens that the Bureau's procedural rules might otherwise impose.

Fourth, the detailed description of the allegations that would be required in the initial notice would give defendants some time to prepare for litigation, including time to gather the documents that they would be required to identify, if not produce, with their answer. It would also help to remedy, to some extent, the lack of balance inherent in expedited procedures which stems from the fact that only complainants control the timing of the litigation.

Any one of these advantages, in and of itself, justifies the minimal delay associated with this thirty-day period. In combination, they provide compelling justification for it.

The Bureau also seeks comment on "whether, or in what circumstances, previously filed complaints should be designated for inclusion on the Accelerated Docket."[19] Ameritech believes that it should be incumbent upon parties to request expedited Task Force consideration of a complaint in their

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[19] Notice at 5.

initial pleadings.[20] The Task Force should make a determination as to whether the complaint will be handled on an expedited basis and whether a quasi-hearing will be conducted no later than the initial status conference following the filing of the complaint. In cases in which the complainant has requested expedited treatment, and in which pre-filing discussions have thus taken place, the Task Force should endeavor to determine the status of the proceeding before the conclusion of those discussions so that it can make any necessary pre-filing discovery rulings in a timely manner.

Finally, in response to the Bureau's inquiry with respect to confidentiality, Ameritech proposes that, consistent with the confidentiality rules adopted in the Formal Complaints Streamlining Order, any confidential or proprietary information shared prior to the filing of the complaint should, upon the request of the party providing that information, be subject to confidential treatment.[21] To effect this requirement, the Bureau should adopt a standard protective agreement that would be executed by both parties at or before the initial pre-filing meeting.

5. Pleading Requirements

Paragraph 5 of the Notice seeks comment on whether it would be reasonable, in light of the heightened requirements for pleading content adopted

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[20] As a prerequisite to such a request by complainant, the complainant must also have followed the pre-filing requirements discussed above.

[21] See Formal Complaints Streamlining Order at paras. 254-55.

in the Formal Complaints Streamlining Order, to require that answers be filed within seven calendar days of a complaint. The Bureau suggests that this seven-day pleading cycle would "likely would be necessary in the 60-day complaint process currently under contemplation."[22]

Ameritech submits that this proposal to require an answer seven calendar days after a complaint is patently unreasonable and only underscores the fundamental fallacy of attempting to establish a sixty-day decision process for complaints involving disputed facts. In the Formal Complaints Streamlining Order, the Commission reduced the time for filing an answer from 30 days to 20 days. Rejecting arguments that 20 days was not sufficient, particularly in light of the more rigorous pleading requirements established in that order, the Commission concluded that a twenty-day deadline for answers was "necessary in light of the Congressional intent to expedite the resolution of complaints alleging anti-competitive behavior by defendant carriers."[23] Ameritech does not understand how, having balanced the goals of speed and fairness in the handling of complaints and concluding that 20 days should be sufficient time to file an answer, the Commission - through the Bureau - can now propose in a Public Notice to reduce the time to answer by two thirds, from 20 to 7 days. This proposal is particularly astonishing given the concomitant proposals to: (i) heighten even further pleading requirements for answers by requiring

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[22] Notice at 5.

[23] Formal Complaints Streamlining Order at para. 100.

defendants to produce, not merely identify, all documents relevant to disputed facts or all documents "likely to bear significantly on any claim or defense;"[24] (ii) require defendants to file all discovery requests with their answer; (iii) require defendants to respond to complainant's discovery requests within three days of the answer; and (iv) require joint stipulations five days after the answer.

Given the amount of information that defendants are required to provide with, or shortly after their answer, they must be given at least twenty days to file their answers. In the event there are no significant facts in dispute and no further discovery or briefs are necessary, the Bureau can decide the case within 60 days. Otherwise, the Bureau must allot at least 90 days, and up to 120 days if permitted by statute, to resolve the matter.

6. Status Conferences

In paragraph 6 of the Notice, the Bureau suggests that, in order to meet the proposed 60-day deadline, a status conference would have to be scheduled no later than 15 calendar days after the filing of the complaint. The Bureau invites comment on the feasibility of holding a status conference at that time. It also proposes to require parties to meet and confer prior to the status conference about the following issues: (i) settlement prospects; (ii) discovery; (iii) issues in

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[24] Under the rules adopted in the Formal Complaints Streamlining Order, defendants must produce all documents upon which they intend to rely, and they must identify all documents that they deem relevant to disputed issues. The Commission, however, specifically rejected the notion that parties should be required to produce all documents identified as relevant. See Formal Complaints Streamlining Order at paras. 85-87.

dispute; and (iv) a schedule for the remainder of the proceeding. Parties would be required to submit a joint written statement of their agreements and disputes regarding these matters, as well as a joint statement of stipulated and disputed facts, two days in advance of the status conference.

Ameritech supports the Bureau's proposal to require parties to meet and confer prior to the initial status conference, as well as its proposal to require a status conference after the initial pleadings and discovery responses have been filed. Here again, however, Ameritech cannot support the proposed schedule for these events.

Under the Bureau's proposal all discovery would have to be completed no later than 11 calendar days after the filing of the complaint (so that the parties could take at least one day to review discovery responses and then meet and confer and draft the required stipulations on day 13). Assuming that defendant filed its discovery requests with its answer on day 7, this would give complainant only four days to respond to defendant's discovery request. If, as is likely, there would be an ensuing week-end or a holiday, the schedules would be even more contracted. Moreover, during this same four-day (or less) period, the complainant would have to review defendant's answer and all of the documents provided therewith so that the complainant is in a position to consider settlement, request any necessary further discovery, and to draft joint stipulations prior to the status conference. These steps simply cannot be

completed with anything approaching adequacy in the time frames proposed. To avoid a sure and complete break-down in its processes, the Bureau should follow the Formal Complaints Streamlining Order and schedule an initial status conference ten days after the filing of the answer (30 days after the filing of the complaint).

At that conference the Bureau should establish further schedules for the proceeding, including schedules for any further discovery, hearings, and briefs. The Bureau should also make itself available for further status conferences as necessary - for example, if the parties continue to have discovery disputes.

7. Damages

In paragraph 7 of the Notice, the Bureau notes that it would be extremely difficult to address damages, as well as liability, in a 60-day time frame, and it, accordingly, seeks comment on whether parties seeking expedited consideration of a complaint should be required to bifurcate liability and damages issues. Ameritech agrees that it would be difficult to resolve damages issues even in a 90 to 120 day complaint process, and it, accordingly, supports the Bureau's suggestion that it reserve the expedited Task Force process solely for liability issues. This proposal could also avoid unnecessary burdens and costs by enabling the Bureau to make a finding as to liability before undertaking any damages inquiry. Moreover, as the Commission recognized in the Formal Complaints Streamlining Order, bifurcation of liability and damages issues "will

enable the Commission and the parties to focus initial resources on addressing allegations of anti-competitive conduct and any necessity for prospective injunctive relief."[25] In this respect, as well, bifurcation serves the public interest by prioritizing issues that most require prompt attention.

8. Other Issues

Paragraph 8 of the Notice invites comment on whether any other rules should be specifically tailored to accommodate a 60-day adjudication process. Because Ameritech opposes adoption of a 60-day process, Ameritech has no comments on this paragraph of the Notice.

9. Review by the Commission

Paragraph 9 of the Notice seeks comment on certain issues relating to Commission review of Task Force decisions. Specifically, noting that section 208(b) of the Act requires the Commission to decide within five months all complaints alleging that a "charge, classification, regulation, or practice" is unlawful, and that the Commission may not delegate such authority to the Bureau, the Bureau asks whether the Commission should conduct *en banc* oral arguments in Task Force proceedings in which the Commission does not summarily adopt the initial Task Force decision. The Bureau also asks whether it would be reasonable to require that all briefing on any petition for review of a

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[25] Formal Complaints Streamlining Order at para. 180.

Task Force decision be completed between 20 and 30 days of the decision's release.

For many of the same reasons that Ameritech favors the use of "hearing-type procedures" in formal complaints involving complex disputed facts, Ameritech favors *en banc* hearings in connection with petitions for review of Task Force decisions. In particular, like so-called minitrials, *en banc* hearings are likely to permit more informed consideration of the facts and the law than would paper pleadings by themselves. *En banc* hearings could be particularly valuable in cases in which the Commission is required to act quickly because they give commissioners the opportunity to ask questions and to elicit clarification of the facts and the positions taken in the parties' briefs.

Ameritech also supports the briefing schedules proposed in the Notice. Although the Bureau appears to have proposed these schedules under the assumption that Task Force decisions would be rendered in 60 days, there is no reason why these same schedules could not be used in the context of a 90 to 120 day complaint process. For example, assuming a 90-day decision by the Task Force in cases subject to a statutory deadline, any application for review of the decision could be due 15 days after release of the decision. A reply brief could be due 7 or 10 days later, and an *en banc* hearing could be held 7 days thereafter. This would leave the Commission approximately 30 days to generate a decision

on review, which, considering the expedited nature of the proceeding, is certainly reasonable.[26]

D. CONCLUSION

Ameritech supports the development of alternative procedures that would ensure "full and fair resolution of disputes in the most expeditious manner possible." Ameritech is concerned, however, by the Bureau's proposal to adjudicate all formal complaints referred to the Task Force in 60-days. This proposal places too much emphasis on speed, at the expense of due process and fairness. It would also compromise the Bureau's ability to render quality decisions based on careful consideration of the issues.

Instead of the proposed 60-day process, the Bureau should commit to deciding all complaints referred to the Task Force in 90 days, if necessary to meet a statutory deadline, and no more than 120 days in other cases. These more reasonable deadlines - which, for the most part, could be met without changes to the rules adopted in the Formal Complaints Streamlining Order - more properly balance the goal of speedy decision-making, on the one hand, with the imperative of a fair and just process and well-reasoned decisions, on the other.

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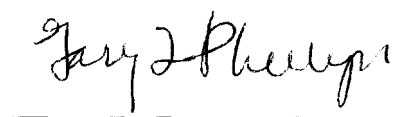
[26] Under the Bureau's proposal, which assumes a 60-day Task Force adjudication, all briefing on any application for review would be completed 80-90 days after the complaint was filed. Thus, the Bureau's proposal would give the Commission from 60-70 days, out of a 150 day process, to generate an order on review. Ameritech respectfully submits that this is unreasonable. It is not fair to ask parties to complete an adjudication, replete with discovery and a hearing, and to complete all briefing on reconsideration of the initial decision in a mere 80 to 90 days, while giving the Commission 60 to 70 days to rule on those briefs.

The Bureau should revise its proposal accordingly and adopt the other recommendations described above.

Respectfully Submitted,



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